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COLUMBIA, SOUTH CAROLINA

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VIA ELECTRONIC FILING

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
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**Re: State Universal Service Support of Basic Local Service included in a
Bundled Service Offering or Contract Offering
Docket No. 2009-326-C**

Dear Mr. Terreni:

I am writing about a discovery dispute that has arisen in the USF/Bundles proceeding. Because of the testimony deadlines that are in place, there is real urgency to getting the matter resolved.

We submitted discovery requests to ORS on August 13, 2009. Among the documents we sought were copies of the forms which Carriers of Last Resort submit annually to request funds from the USF. On September 2nd ORS objected to producing those forms and on September 16th we filed a motion to compel. Memoranda were submitted to Hearing Officer David Butler. On October 7th Hearing Officer Butler issued his order requiring ORS to produce the documents within five days. The order also protected the confidentiality of the documents.

Yesterday ORS and the SC Telephone Coalition jointly filed a motion seeking Commission review of the Hearing Officer's order. I have had a conversation with counsel for ORS. I proposed that ORS produce the documents to us without prejudice to its ability to contest the basis of the Hearing Officer's decision. That proposal was refused. It is my understanding that it is the position of ORS that by seeking review of the Hearing Officer's order ORS was automatically relieved of the obligation of complying with that order.

We don't agree that the request for review acted as an automatic stay. There is no provision of the Commission rules that specifically addresses the issue. However, Rule 103-835 provides that the South Carolina Rules of Civil Procedure govern all discovery matters not specifically covered by the Commission rules. Rule 26(c) SCRPC provides that parties seeking to prevent discovery should do so by filing a motion for a

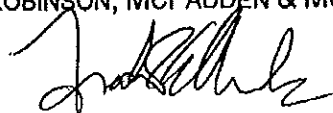
protective order. ORS has not filed such a motion and has not asked either the Hearing Officer or the Commission to stay the effect of the order. We think that ORS should immediately produce the documents while continuing to pursue its request for review of the order. We also think that as a matter of policy it would be an unfortunate precedent for a party in PSC litigation to be able to obtain an automatic stay of a decision of a Hearing Officer by simply asking for Commission review of the decision.

Our request that the documents be immediately produced is supported by additional circumstances. The parties we represent have an approaching deadline of October 23rd to file rebuttal testimony. We would very much like to be able to review these forms prior to filing that testimony. Also, the ORS/SCTC request for review of the order makes no argument about any harm that would flow from delivery of the documents under the protective provisions of the order. Instead, the request for review focuses on disagreements that ORS and the SCTC have with the reasoning of the order. Those issues will not be made moot by delivery of the documents and the Commission can address the issues in its order ruling on the merits.

Thank you for considering our concerns about this situation. I understand that the Commission meeting this week has been moved to Thursday. If it is possible for this matter to be placed on a supplemental agenda and addressed then we would appreciate it.

Yours truly,

ROBINSON, McFADDEN & MOORE, P.C.



Frank R. Ellerbe, III

FRE

cc: F. David Butler, Hearing Officer (via email)
Other parties of record (via email)
John J. Pringle, Jr., Esquire (via email)